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Question of the violation of human rights and fundamental freedoms in any part of the world

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report on the situation of human rights in Timor-Leste, prepared by the former High Commissioner for Human Rights, Mary Robinson, pursuant to the Commission on Human Rights Chairperson's statement of April 2002, which was endorsed by the Economic and Social Council, by decision 2002/283, on 25 July 2002.

* This report is being submitted on 2 October 2002, so as to include as much updated information as possible.

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Interim report of the United Nations High Commissioner for Human Rights on the situation of human rights in Timor-Leste

Summary

There is much to commend the human rights progress of the Government and people of Timor-Leste achieved in the three years since the popular consultation. Timor-Leste has risen from the embers of violence, and has now taken its place as the newest member in the family of the United Nations. The foundations of institutional structures and mechanisms to promote and protect human rights have been laid, including within the Constitution, within Government apparatus, the judiciary, the National Parliament and within a vibrant civil society. Serious human rights concerns, however, continue to persist in this now independent sovereign State, including a weak justice system, increasing reports of domestic violence and reports of assaults and intimidation against returnees from West Timor. Continuing attention is also required on the provision of health, nutritional, literacy, education and other social services, as well as employment creation and poverty alleviation measures as preconditions to the enjoyment of all human rights. Moreover, as evidenced by the United Nations High Commissioner for Human Rights during her visit to Timor-Leste in August 2002, accountability for the serious crimes that took place there in 1999 remains the key concern of the Timorese. As Timor-Leste finally joins the world stage as an equal partner, it is crucial that the international community continue to support the country's efforts to develop a uniquely Timorese society with respect for human rights, rule of law, democracy and justice at its core.

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I. Introduction

1. At the fifty-eighth session of the Commission on Human Rights, the United Nations High Commissioner for Human Rights submitted a report on the situation of human rights in Timor-Leste. In this report, the High Commissioner noted that it was essential to continue to strengthen new and vulnerable institutions in Timor-Leste, including the development of strong mechanisms for the protection of human rights.

2. The Chairperson of the Commission issued a statement on the situation of human rights in Timor-Leste, in which the High Commissioner was requested to submit an interim report to the General Assembly at its fifty-seventh session and to report to the Commission at its fifty-ninth session.[1] The Economic and Social Council endorsed the statement of the Chairperson at its substantive session of 2002, in its decision 2002/283.

3. The present report is submitted pursuant to the request contained in the Chairperson's statement and provides information on developments since the High Commissioner reported to the Commission on Human Rights at its fifty-eighth session, including the visit of the High Commissioner to Timor-Leste from 23 to 25 August 2002.

II. Activities of the Office of the United Nations High Commissioner for Human Rights

A. Technical cooperation between the Office of the United Nations High Commissioner for Human Rights and the Government of Indonesia regarding the prosecution of human rights violations committed in Timor-Leste in 1999

4. As the High Commissioner has reported before, implementation of a programme of technical cooperation between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of Indonesia, to include training for judges, prosecutors and defence counsellors of the Ad Hoc Human Rights Courts for Timor-Leste, was to have commenced in mid-2001. Implementation of this programme was initially put on hold by OHCHR, pending revision of Presidential Decree No. 53 of 23 April 2001. This Presidential Decree established the Ad Hoc Human Rights Courts for Timor-Leste, with jurisdiction over cases arising from the violence that took place after the popular consultation in Timor-Leste held on 30 August 1999.

5. This Presidential Decree was revised by Presidential Decree No. 96 of 1 August 2001, whereby the jurisdiction of the Court was revised to cover cases that occurred in April and September 1999 in the districts of Dili, Liquisa and Covalima. In order to proceed with implementation of the programme of technical cooperation, the High Commissioner requested clarification from the Indonesian authorities that the jurisdiction of the Court would be expanded to include cases other than those that occurred in April and September 1999 in the districts of Dili, Liquisa and Covalima. The Indonesian authorities subsequently informed the High Commissioner of their view that the jurisdiction of the Court met the requirements

set out in the Commission on Human Rights' Chairperson's Statement on East Timor of 2000. In that statement, the Commission welcomed the important steps taken by the Government of Indonesia to bring to justice the perpetrators of cases of gross human right violations in East Timor in the period leading up to and immediately following the popular consultation held in August 1999.[1] The High Commissioner noted that the geographic and temporal limitations placed upon the jurisdiction of the Court deny the Court from hearing all serious crimes alleged to have taken place during the lead up to and immediately following the popular consultation. Many serious crimes have been reported to numerous independent observers as having taken place in Timor-Leste outside of Dili, Liquisa and Covalima other than in April and September 1999, including those cases reported to the investigative team of the Indonesian National Human Rights Commission, the International Commission of Inquiry on East Timor, and the United Nations Transitional Administration in East Timor/the United Nations Mission of Support in East Timor (UNTAET/UNMISET). These cases fall outside the jurisdiction of the Court and, therefore, the Court lacks the capacity to deal with all human rights violations perpetrated in the period from 1 January to 25 October 1999. As a result, OHCHR has thus far been unable to provide technical cooperation to support this process.

B. Technical cooperation between the Office of the United Nations High Commissioner for Human Rights, the United Nations Transitional Administration in East Timor/United Nations Mission of Support in East Timor and the Government of Timor-Leste

6. The High Commissioner has reported earlier on the progress of implementation of the programme of technical cooperation between OHCHR and UNTAET to strengthen national infrastructure for the promotion and protection of human rights in Timor-Leste. Implementation of this programme was completed in mid-2002 and was followed by an external evaluation of the project. The evaluation noted that all programme activities had been undertaken successfully and recommended that an expanded programme of technical assistance be provided by OHCHR to the Government of Timor-Leste to consolidate these achievements. Accordingly, OHCHR, UNMISET and the Government of Timor-Leste have since elaborated a further two-year programme of technical cooperation, implementation of which is to commence in late 2002. The focus of this programme will be on providing technical assistance in the following areas: ratification and implementation of international human rights standards, including reporting obligations; the Commission on Reception, Truth and Reconciliation; human rights training and skills-building for administration of justice professionals; the establishment and functioning of the national human rights institution, the Provedor for Justice and Human Rights; and human rights education.

7. The High Commissioner visited Timor-Leste, for the second time, from 23 to 25 August 2002 and met with the President, the Prime Minister, the Foreign Minister and other senior Government officials, members of the National Parliament, judges and lawyers, and representatives of civil society, including human rights non-governmental organizations and women's groups. The High Commissioner delivered a speech to the National Parliament on the importance of prompt ratification of the principal international human rights instruments, and emphasized the role of the

National Parliament to assist in implementation of the obligations contained therein. The High Commissioner also travelled to Suai, where she met with, inter alia, the victims and relatives of victims of the 1999 violence. In Liquisa, the High Commissioner had the privilege of witnessing the first community reconciliation process undertaken by the Commission on Reception, Truth and Reconciliation.

8. OHCHR hosted a short visit to Geneva by the Human Rights Adviser to the Prime Minister on 28 August 2002, during which the Human Rights Adviser was familiarized with the work of OHCHR. It is anticipated that the Human Rights Adviser will make a follow-up in-depth study visit in 2003.

III. Human rights situation in Timor-Leste and related activities

A. Status of investigations and prosecutions of serious crimes committed in Timor-Leste 1999

9. The Serious Crimes Unit was established by UNTAET to investigate and prosecute serious crimes that occurred between 1 January and 25 October 1999. Since commencing operations, the Unit has filed 40 indictments against a total of 118 individuals. Of those indictments, 19 are for charges of crimes against humanity. To date, 25 persons have been convicted by the Serious Crimes Panel of the Dili District Court and one person acquitted, owing to lack of jurisdiction.

10. As the High Commissioner has reported earlier, the decision in the Los Palos trial, the first case of crimes against humanity to be heard by the Special Panel of the Dili District Court, was handed down in December 2001. Each of the ten defendants present was convicted of at least one charge and sentenced to a period of imprisonment ranging from 4 years to 33 years and four months. The eleventh defendant, an Indonesian Kopassus officer, is still at large. The arrest warrant issued against him by the Special Panel has not yet been executed by the Indonesian authorities.

11. Trial proceedings in the Lolotoe case of crimes against humanity, the second priority case to proceed to trial and the first indictment to include gender crimes as crimes against humanity, commenced in March 2002. However, because of delays caused by Timorese judicial stoppages and conflicting scheduling with other cases, only 3 of the 36 expected witnesses for the prosecution have been heard. The Lolotoe case will resume hearings in October 2002.

12. In March 2002, the Ad Hoc Human Rights Court in Jakarta began hearing cases. A total of 18 defendants have been charged before the court in 12 twelve separate trials. The defendants are all accused of crimes against humanity under an Indonesian statute patterned after the Rome Statute of the International Criminal Court. The charges against all the defendants focus on five main incidents.

13. All 18 of the defendants are charged on the basis of command responsibility for crimes of omission, rather than direct commission, in that they failed to take action to prevent, repress or investigate and punish the commission of crimes committed by persons under the defendants' control. The indictments allege widespread or systematic acts of murder and persecution directed against a civilian population, and that the defendants failed to prevent their subordinates from

carrying out such crimes. These charges carry minimum sentences of ten years' imprisonment and maximum sentences of death.

14. The defendants include officials from the military, the police and the civil administration. The highest ranking official from the civil administration is former East Timor Governor Abilio Soares. One of the defendants, Eurico Guterres, was leader of a Dili-based militia group and deputy commander of an umbrella organization for East Timor militias.

15. The 12 trials are at different stages of completion. Decisions have been delivered in the three trials that started in March 2002: Abilio Soares was convicted and sentenced to three years' imprisonment, whereas the statutory minimum is 10 years; all other defendants were acquitted. The prosecution has lodged appeals against the acquittals. The statute requires a decision in the case within six months of the time it is presented to the court. Accordingly, all trials should be completed by January 2003. Indonesian prosecutors have so far announced no plans to indict other individuals not already charged.

16. The High Commissioner has publicly recognized the efforts made by the Indonesian Government to bring to justice, some of the individuals suspected of committing crimes against humanity in Timor-Leste in 1999, as required by the Security Council in resolution 1264 (1999). However, there are a number of concerns regarding the progress of proceedings at this stage. First, the limited jurisdiction of the Court continues to hamper efforts at establishing accountability for human rights violations that took place in Timor-Leste during 1999. The Indonesian authorities appear unwilling to bring to justice any perpetrators of crimes against humanity committed in 10 of Timor-Leste's 13 Districts. For instance, UNTAET/UNMISET has documented more than 200 people who were killed in Bobonaro. In Oecussi, 174 people were reportedly killed. None of those killings, nor other acts constituting crimes against humanity, fall within the jurisdiction of the court. Of the three districts that do fall within the jurisdiction of the Court, killings which took place in months other than April and September 1999 will not be investigated nor brought to court.

17. A second concern relates to the failure of the prosecution to put before the court evidence that portrays the killings and other human rights violations as part of a widespread or systematic pattern of violence against the population of Timor-Leste, which is a requirement for proof of a crime against humanity. Instead, the indictments present the killings and other abuses as the result of spontaneous conflict between armed factions within Timorese society. This seriously undermines the strength of the prosecution's case and jeopardizes the integrity and credibility of the process. This approach also contradicts the conclusions of the International Commission of Inquiry on East Timor of 31 January 2000. That inquiry concluded that "there were patterns of gross violations of human rights and breaches of humanitarian law which varied over time and took the form of systematic and widespread intimidation, humiliation and terror, destruction of property, violence against women and displacement of people. Patterns were also found relating to the destruction of evidence and the involvement of the Indonesian Army and the militias in the violations". The prosecution's approach also conflicts with the judgements of the Serious Crimes Court in Dili, which has, as reported earlier, handed down a number of convictions for crimes against humanity (including in districts outside the Ad Hoc Court's limited jurisdiction) based upon the Court's conclusion that

members of the Indonesian Army planned, carried out and directed militia to participate in widespread and systematic attacks on the Timorese civilian population in 1999.

18. A third concern is that the prosecutions to date have involved presentation to court of only a very small percentage of the available testimony and evidence of victims and eyewitnesses to the 1999 violence, despite ongoing offers of cooperation and assistance by the United Nations Assistance Mission in East Timor (UNAMET)/UNTAET/UNMISET. In the first three trials, the prosecution presented the testimony of only three Timorese witnesses.

19. Those few Timorese witnesses who have travelled to Jakarta to give evidence have complained of intimidation, inside and outside the courtroom, which has not been prevented by the court authorities. That intimidation has been substantiated by observers.

20. As the Secretary-General noted in the statement of his spokesperson on 14 September 2002, the United Nations has been concerned by the suggestions made by the judges, prosecutors and defendants that there were irregularities in the conduct of UNAMET during the popular consultation process. These alleged irregularities are claimed to have contributed to the widespread violence that engulfed the Territory in September 1999. The High Commissioner recalls that these allegations are false and that the large-scale organized and coordinated violence of September and October 2000, following the announcement of the result of the popular consultation, was not a consequence of any irregularities in the ballot, bias or abdication of security responsibilities on the part of UNAMET. The High Commissioner recalls the offer of the United Nations to make available to the Ad Hoc Human Rights Court, upon request from the Indonesian authorities, evidence in connection with these or other relevant issues. To date, this offer has not been taken up by the Indonesian authorities.

B. Capacity-building

1. Access to justice

21. While significant progress has been made, the creation of a well-functioning justice system has been hindered by a number of specific challenges. First among these is the lack of a pool of experienced legal professionals. At the time of the establishment of UNTAET, few Timorese had formal legal training, and the small number of law graduates present in Timor-Leste at that time had almost no practical experience. The lack of human resources was such that not all positions could be filled and vacancies still remain in judicial personnel of two of the four regional courts. These regional shortfalls mean that cases must be referred to the Dili District Court, which already has the largest population size within its jurisdiction.

22. Along with a lack of personnel, inadequate facilities and resources have been a constant problem in the development of the justice system. Limited legal research materials are available in Timor-Leste, and even those are not accessible to all jurists, since most material is located in Dili. Insufficient numbers of administration staff have been hired, with the result that judges, public defenders and prosecutors are required to attend to administration tasks in addition to their own research and court duties.

23. The Public Defenders Office is grossly under-resourced. Only 10 Timorese lawyers are employed to cover the entire country. The Baucau and Oecussi Courts have only one public defender each, while no public defender has yet been appointed to the new Suai Court. In practice, the Timorese public defenders are appearing increasingly rarely in the Special Panel, on the ground that they lack sufficient resources and the capacity to participate in trials of such magnitude.

24. Other areas in the Timorese justice system that require strengthening are jurist training and professional accountability. Lack of experience among all jurists leads to inconsistent decision-making which, in turn, reduces the confidence of the public in the judicial system.

25. While there has been an attempt by the Ministry of Justice to address the serious lack of training of jurists, the training so far provided has not yet addressed some areas of immediate concern, such as criminal cases and professional ethics. The Ministry is yet to distribute a code of ethics for judges, prosecutors and public defenders. Although the Ministry prefers to provide training in intensive, week-long periods, this arrangement impedes the functioning of an already overstretched criminal justice system, particularly in relation to detention review hearings. There is also a question concerning the language used by the Ministry in trainings: in accordance with Government policy, the Ministry conducts its training in Portuguese, often with inadequate translation, although most jurists currently practising in Timor-Leste received their legal training in Bahasa Indonesia, and many state that they are unable to understand Portuguese.

26. Another significant concern of the justice system relates to pre-trial detainees. As at the date of writing, 70 per cent of the current 320 detainees are pre-trial detainees, of which 25 per cent are being held on expired detention warrants. It is also common for suspects, including juveniles, to spend more than six months in pre-trial detention, even for relatively minor matters, with little progress made in their cases. Further, action by public defenders in preparing evidence and making submissions to the Court to request conditional release has been less than adequate. It must also be recognized that the limited working hours of the ordinary panels of the district courts, in particular, the courts outside Dili, add to the delays in detention.

27. Inadequate access to defence counsel is a continuing problem and many detainees have to wait up to several months for an interview with their assigned public defender. Very few detainees request a public defender to assist them at their initial police interview, as the concept of defence counsel remains a novel one to the majority of Timorese. Further, detainees have no reliable means of communicating with the Public Defenders' Office from within the detention centres.

28. Frustration with the pace of justice was among the complaints of detainees during their protests in March, June and August 2002. The Investigation Team appointed by UNTAET to report on the prison disturbances which took place in March concluded that systemic problems of access to justice within the Public Defenders' Office exacerbated the tension caused by judicial delays.

29. At the request of the Timorese judges, and with the agreement of the Government and the support of OHCHR and UNMISET, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, Dato' Param Cumaraswamy, visited Timor-Leste for the second time, from 11 to 14

July 2002. The purpose of the visit was to provide advice and assistance to the Government and the judiciary, some of whom had stopped work, owing to concerns about their continued authority post independence, whereby the court system effectively ground to a halt. The Special Rapporteur urged the judges to return to work immediately, while continuing a dialogue with the Government to resolve any outstanding technical problems associated with the decree confirming their authority. The Special Rapporteur underlined the fundamental importance of the role of judges in safeguarding the rights of individuals and the community. After President Gusmao assented to the relevant decree, those judges who had considered themselves unable to hear cases in the absence of a due process of reappointment, recommenced duties on 15 July 2002.

30. Since December 2001, there has been no quorum in the Court of Appeal, which has functioned only intermittently since its creation in January 2000. A large number of cases from both the Ordinary and Special Panels await appeal, including interlocutory appeals from cases currently before the Court of First Instance. This is perhaps the most serious issue within the justice system, as there is no possibility for review of unlawful decisions until such time as the Court of Appeal is able to work to full capacity.

2. Detention

31. Following a relatively promising start in the redevelopment of the prison system, there has been a marked deterioration in the stability and security of the prisons since March 2002. This is partly attributable to the withdrawal of international management before adequate management policies had been established and trained national managers appointed. Weaknesses in the justice system have also contributed to the deterioration. Illegal or long-term detention before trial is a principal concern and one that causes instability in the detention centres, as detainees grow restless and dissatisfied. With little in the way of rehabilitation programmes, monotony is constant and can exacerbate tensions. Three major disturbances of increasing gravity have indicated the extent to which detainees are dissatisfied and prepared to challenge authority. Following the first disturbance in March, a report commissioned by the Transitional Administrator contained 28 recommendations on policy and operational matters relating to the correctional system. However, the majority of the recommendations are yet to be implemented by the relevant Ministry. The underlying causes noted in the report were also fundamental factors in the disturbances of June and August. In the latter disturbance, over 180 detainees, or approximately two thirds of the Becora detention centre population, escaped from the prison, although many of them subsequently voluntarily returned to the prison, or were arrested and brought back.

32. There have been relatively few allegations by inmates of ill-treatment by prison officers, although some cases, including alleged assaults on juveniles, have been reported. Staff morale is low, with absenteeism and non-observance of proper procedures becoming endemic.

33. Since January 2002, juveniles have been separated from adults in Becora prison. However, there remains a need for improved facilities for women, juveniles and mentally ill inmates, as well as a security classification system. In the Gleno and Baucau prisons, for example, sentenced prisoners are not separated from pre-trial

detainees. There also is a general lack of diversionary programmes in Timor-Leste for both adults and juveniles.

34. The UNMISET Human Rights Unit has implemented an ongoing programme of training for prison staff. Basic human rights training was given to most prison officers during the reporting period and further training for managers, as well as publication of a manual on detention standards, is planned for the remainder of 2002 and into 2003.

3. The Timor-Leste Police Service

35. While significant progress has been made in the training and development of the Timor-Leste Police Service, training, mentoring and oversight by experienced United Nations Civilian Police officers continue. Ultimate executive authority over the police service will remain with the United Nations Civilian Police Commissioner until the full handover of the headquarters structures in January 2004.

36. Many Timor-Leste Police Service officers are relatively inexperienced, having only begun their police training under UNTAET within the past two years. The experienced officers served with the Indonesian police forces, which has, to some extent, raised its own concerns. Although all former police officers went through a vetting process before joining the Service, concerns remain about the potential for tension and lack of trust of ordinary Timorese with police officers.

37. As Timor-Leste Police Service officers have assumed a greater role in regular police activities, there have been a number of allegations of malfeasance concerning their conduct, both on and off duty, including allegations of excessive use of force and assault. In several cases, officers are reported to have struck civilians in the course of arrests or investigations. On at least two occasions, off-duty officers are alleged to have assaulted civilians. In the most serious instance, a Timor-Leste Police Service officer allegedly raped a 14-year-old girl; criminal investigation in this matter is ongoing.

38. Both the Timor-Leste Police Service and the United Nations Civilian Police recognize that any alleged criminal conduct by a Timor-Leste Police Service officer should be investigated as a crime. Cases of alleged misconduct by Timor-Leste Police Service officers are currently investigated through the United Nations Civilian Police Professional Standards Unit, on the instruction of the Commissioner's office. However, as part of the training and handover process, disciplinary recommendations in cases involving Timor-Leste Police Service officers are passed on to the Timor-Leste Police Service National Commissioner and, on a district level, Timor-Leste Police Service officers have been assigned to investigate some of the allegations against other officers of the Service. The results of these investigations are not always certain and there is a demonstrated need for a formal, transparent, accessible disciplinary process, as well as for a formal oversight mechanism. Legislation to establish a disciplinary code is being prepared.

4. The military

39. While the United Nations Peacekeeping Force continues to play a role in guaranteeing external security, this role also will eventually be completely assumed by Timor-Leste. The process of developing the Timor-Leste Defence Force

(Falintil-FDTL) has continued in the UNTAET successor mission, with the focus on the gradual transfer of responsibility from the peacekeeping force to Falantil-FDTL.

40. As the Falantil-FDTL assumes a more active role, particular issues concerning the nexus between civilian and military responsibility need to be clearly addressed. While military personnel receive human rights training in the context of training on the law of armed conflict, UNMISET has identified a position within the Human Rights Unit for a police-military trainer, to work more closely with the Falantil-FDTL on specific human rights issues.

41. There have also been a few incidents between members of Falantil-FDTL and TLPS personnel; in some cases, tension between the two groups has led to stand-offs, where there has been the potential for escalating confrontation between soldiers and police.

5. The ratification process

42. The Government of Timor-Leste has made several public statements indicating its commitment to accede to the principal international human rights instruments.[2] During events to promote ratification of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, the Prime Minister reiterated the importance of the promotion and protection of human rights and the intention of the Government to submit its instruments of accession regarding these human rights instruments.

43. The Office of the United Nations High Commissioner for Human Rights seconded a human rights expert from May to September 2002 to provide advice to the Ministry of Foreign Affairs on ratification of the principal international human rights instruments. OHCHR has also advised on a number of awareness-raising activities on the conventions, which included the participation of a number of Government departments and United Nations agencies. The project targeted various sectors of Timorese society. Each sector positively responded to the process and supported Timor-Leste's ratification of the international human rights instruments.

6. Development of civil society and non-governmental organizations

44. The role of civil society in Timor-Leste remains a fundamental component of the development of the nation as one through which the principles of democracy, human rights and the rule of law are implemented and respected. OHCHR, through its technical cooperation project with UNTAET/UNMISET, has continued to work on projects aimed at strengthening civil society's capacity to promote and protect human rights throughout Timor-Leste.

45. UNMISET is continuing to support the network of human rights trainers who are now based in the districts and the Human Rights Unit works closely with non-governmental organizations or human rights networks, some of which were established with support from the Unit.

46. In addition to its work in supporting civil society, UNMISET has continued to train Timorese human rights officers working within the Human Rights Unit. There are currently nine such officers, all of whom receive on-the-job training by working alongside their international counterparts and who have also taken part in special training sessions conducted by the Unit.

C. Commission on Reception, Truth and Reconciliation

47. The UNTAET regulation on the establishment of a Commission for Reception, Truth and Reconciliation in Timor-Leste was promulgated on 13 July 2001. The regulation outlines the three main objectives of the Commission: first, to inquire into and establish the truth about human rights violations committed in Timor-Leste between April 1974 and October 1999; second, to support the reintegration of those who have committed minor criminal offences or harmful acts in the past, through a community reconciliation process; and third, to submit a report to the Government on the Commission's findings and make recommendations as to how to prevent future recurrences of human rights violations.

48. Seven national commissioners are responsible for the overall policy and operation of the Commission, supported by 29 regional commissioners. The Commission also has 200 staff, who are supported by a small number of international technical experts. The enabling legislation specifies that the Commission shall operate for a period of 24 months, beginning two months from the date of appointment of the Commissioners, with the possibility of an extension of up to six months.

49. On 21 January 2002, the seven national commissioners were sworn in. Since then, the Commission has taken steps to become operational and, as at the date of writing, statement taking has commenced and public hearings are expected to commence in late 2002.

D. Protection of ethnic and religious minorities and other vulnerable groups

1. Protection of ethnic and religious minorities

50. Timor-Leste's Constitution guarantees protection for religious and ethnic minorities against discrimination. Over 200 Indonesian Muslims, the majority of whom claim to have been residents of Timor-Leste before September 1999, are still living in the Dili Mosque, more than two and a half years after they sought refuge there as a result of the violence resulting from the popular consultation. Despite efforts to implement some of the recommendations of the September 2001 Commission of Inquiry into the concerns of the community at Kampung Alor, the concerns of the Muslim community in the Mosque remain unresolved. Isolated incidents and threats of violence against the Protestant minority have also been reported.

2. Human rights violations against women; women's rights as human rights

51. The Timorese Constitution guarantees the equality of men and women. This is a positive development, but much work remains to be done to ensure that this constitutional right is, in fact, realized. There are a number of challenges regarding the realization of these rights for women, not least of which is access of women to justice and the prevalence of violence against women and girls, including domestic violence and incest. The Timor-Leste Police Service and the United Nations Civilian Police claim that the number of reported incidents of domestic violence and other violence against women has increased in Timor-Leste in 2002 in comparison to 2001, partly owing to increased awareness and reporting.

52. There appears to be institutional discrimination against women in the justice system. Prosecutors and the judiciary often urge that certain cases be addressed through mediation or so-called traditional dispute resolution, or participate in such processes. Such mediation often favours those with power.

53. Female victims in cases of rape or domestic violence are consistently asked questions about their sexual relationships and their role as a wife and mother. Such questioning is not only permitted by the judges, but is often instigated by them.

54. Rape within marriage is not recognized by the law and domestic violence is dealt with by the police and prosecutors through general assault charges. To redress these problems, a working group has been established under the Adviser to the Prime Minister on the Promotion of Equality, to develop legislation to protect women against violence. The working group consists of women's non-governmental organizations, members of the judiciary, the United Nations Population Fund and the United Nations Children's Fund (UNICEF). The work of the group is ongoing. UNMISET has a gender focal point who coordinates the efforts of United Nations agencies to protect and promote women's rights.

55. Institutional capacity to deal with such cases remains low. The police Vulnerable Persons Unit is under-resourced and the rate of international United Nations Civilian Police turnover hinders capacity-building of Timor-Leste Police Service officers in the section.

3. Children

56. UNICEF is the lead agency on child protection issues in Timor-Leste and the UNMISET Human Rights Unit liaises closely with it and other agencies, including the Timorese Government's Division of Social Services, in relation to the human rights of children. The limited data available on children suggests that child protection is an area that should be prioritized. UNICEF recently commissioned a preliminary case study on child abuse in Timor-Leste, which revealed evidence of a widespread problem, and is now sponsoring a more in-depth study, and has used the preliminary findings to draw attention to the issue of child abuse and promote a more coordinated response from the Government.

4. Timor-Leste returnees from West Timor

57. While the rate of returns of refugees has seen a dramatic increase during 2002, there remain an estimated 37,000 refugees in West Timor. As at 17 September 2002, some 222,798 Timorese had returned from Indonesia since October 1999, out of an estimated 260,000 who took refuge there. Contributors to the increase during 2002 have been the successful and peaceful Presidential election of April 2002, the independence of Timor-Leste, frequent reconciliation meetings by Timorese in both Timor-Leste and West Timor, including the participation of political and other leaders from Timor-Leste in such reconciliation meetings, and the cessation of humanitarian assistance by the Indonesian authorities on 31 December 2001 in West Timor.

58. Misinformation persists, however, as a factor slowing down returns. While there continue to be reports of returnees being assaulted, intimidated and threatened once they arrive in Timor-Leste, reports of the maltreatment of returnees are invariably exaggerated and incorrect. A communication network between

UNMISET, the Office of the United Nations High Commissioner for Refugees (UNHCR), and more crucially, non-governmental organizations in Timor-Leste and West Timor, has helped to rebut rumours of murders and "disappearances" of individuals who have returned to Timor-Leste. Pressure continues to be exerted within Timor-Leste refugee communities not to return. This pressure comes from militia leaders and members, but also from the family members of refugees, some of whom may have particular reasons for not wanting to return. Other refugees have not returned to Timor-Leste owing to their concerns about the economic viability of starting a new life after nearly three years in West Timor.

59. The condition of those refugees who remain in camps in West Timor has deteriorated since the cessation of humanitarian aid. Non-governmental organizations monitoring the camps report that refugees in camps are surviving on corn, sago and cassava. There continue to be reports of malnourished children from the camps in West Timor, although the scale of the problem does not appear to be as large or widespread as media reports had suggested earlier during 2002.

60. UNHCR has announced that, as of 31 December 2002, Timorese remaining in Indonesia will no longer be considered by the Organization as refugees. The Government of Indonesia has also announced that it will close the refugee camps and that those Timorese who chose to remain in Indonesia will be considered to be Indonesian citizens and will be relocated from the camps.

61. The problem of children separated from their families after they fled to West Timor in 1999 persists, although UNHCR and the International Rescue Committee have successfully reunited many such children with their families. According to UNHCR, there are 1,910 cases of children separated from their families in both Timor-Leste and Indonesia, of which 821 are in West Timor, and their parents have returned to Timor-Leste. A further 504 Timorese children have returned to Timor-Leste, while their parents remain in Indonesia. UNHCR reports that there are a further 585 separated children in other parts of Indonesia, either with private carers or located in various foundations. Since September 1999, the International Rescue Committee reports that there have been 1,439 successful family reunifications. Children located in orphanages in Java and other islands pose the most difficulties to reunification.

62. Despite the large number of returnees to Timor-Leste during 2002, reports of assaults against and intimidation of newly arrived returnees have been relatively low. Allegations of assaults, however, against returnees alleged to be linked to pro-autonomy groups or crimes committed during 1999 have been reported. It is likely that this pattern of assaults and intimidation will continue, in particular, because it is believed that there is a high number of alleged perpetrators of 1999 crimes among those remaining in West Timor.

IV. Recommendations for ongoing and future key areas of work to promote and protect human rights in Timor-Leste

63. The High Commissioner warmly congratulates the people of Timor-Leste on their long awaited independence as a sovereign member of the family of nations. As the newest member of the international community, Timor-Leste is in a unique position to show the world how best to lay the foundations for a vigorous culture of

human rights based on a democratic society. The Government and people of Timor-Leste have, however, a challenge before them and much work is required to firmly establish a society committed to the promotion and protection of all human rights for all people. The Timorese are the best placed to strengthen their society and structures, politically, economically and socially. However, to do so, the political, technical and financial engagement of the international community continues to remain crucial. It is in this vein that the High Commissioner encourages the Government of Timor-Leste, UNMISET and other members of the international community to work closely together, in particular, to strengthen a society built upon respect for human rights, rule of law, democracy and justice.

64. UNMISET was established under Security Council resolution 1410 (2002) of 17 May 2002 for an initial period of 12 months, starting on 20 May 2002 to provide assistance to core administrative structures critical to the viability and political stability of Timor-Leste, to provide interim law enforcement and public security and to assist in the development of a new law enforcement agency in Timor-Leste, the Timor-Leste Police Service, and to contribute to the maintenance of the external and internal security of Timor-Leste. The activities of the Human Rights Unit as set out in the report of the Secretary-General include: maintaining liaison with the Commission for Reception, Truth and Reconciliation; providing advice on the human rights situation and on mechanisms to guarantee full respect for human rights; and providing human rights training for the United Nations and Timorese officials, in particular, police and defence personnel. The High Commissioner welcomes the role and responsibilities of the Human Rights Unit and considers its work as crucial to support the newly independent Timorese efforts to consolidate stability, democracy and justice in particular.

65. The High Commissioner commends the work of the Serious Crimes Unit and the Serious Crimes Panel in the two and a half years since their establishment. The High Commissioner notes that the prosecution of serious crimes is a daunting challenge for any legal system, let alone the Timorese system, which has risen from embers in only two and a half short years. The High Commissioner also recalls that, during her recent visit to Timor-Leste, accountability for the 1999 violations was the most pressing issue. Thus, it is essential that the Government of Timor-Leste continue to focus attention, resources and personnel on the resolution of those cases indicted, in order that they be completed by the end of the mandate of the Serious Crimes Unit in less than two years. The international community must also support generously this process.

66. As is the case with the Serious Crimes Panel in Dili, it is essential that the investigations and prosecutions under way in Jakarta be undertaken in full respect of international standards. The United Nations has raised concerns about the investigations and prosecutions process thus far; it is crucial that, in order for the Jakarta trials to be more than merely a symbolic event, they deliver justice and truth. If the process continues to neglect those standards ascribed by the international community, in particular, as called upon by the Security Council, the High Commissioner urges the international community to reconsider its position on the establishment of an international mechanism to deal with the most serious violations of 1999.

67. The High Commissioner reminds the Government of Timor-Leste and the legal profession that access to justice requires the opportunity for everyone to receive fair,

professional and thorough investigation and prosecution and a competent and dedicated defence before an impartial judge. Accordingly, the Government must ensure that the legal community is resourced to fulfil its duties effectively and promptly. We must ask the international community to assist this process. A legal foundation which will protect the independence of the judiciary at this early stage of the nation's development is essential. For its part, the judiciary must overcome the historical legacy of distrust and fear and, through its example, develop public confidence in the system.

68. The High Commissioner is pleased to note that the process to establish a national human rights institution, as mandated by Security Council resolution 1272 (1999), is now in place. The High Commissioner notes that, although the model under consideration, the Provedor for Justice and Human Rights, meets many of the established international standards for the establishment of a broadly mandated, independent, national human rights institution established in accordance with United Nations standards, concerns remain that its mandate will be confined to the public sector, that its membership is not pluralistic and that other important issues are left to be determined in the enabling legislation. The United Nations will continue to support the development and functioning of the Provedor.

69. The High Commissioner commends the Government of Timor-Leste, UNTAET/UNMISET and other members of the international community for putting in place the basis of the penitentiary system. However, the High Commissioner notes with concern that a number of pre-trial detainees remain in detention on expired detention warrants. The High Commissioner recalls that pre-trial detention should be used only sparingly and after very careful consideration of any alternative that may suit the circumstances of the case. The High Commissioner also notes that in a State such as Timor-Leste where resources, both human and material, are limited, there are challenges in ensuring that prison inmates are provided with appropriate facilities, resources and care. Nonetheless, in order for the period of incarceration to serve its rehabilitation purpose, it is essential that educational facilities are provided to juveniles and that there is enhanced care for mentally ill inmates.

70. The High Commissioner commends the work of the Timor-Leste Police Service as it takes over executive functions from the United Nations. The High Commissioner notes the difficulties in establishing a new police force, comprised of both inexperienced police officers and experienced police officers who may be regarded with suspicion by the people of Timor-Leste. The High Commissioner reminds the Timor-Leste Police Service officers of their solemn duty to uphold the rule of law. As a reflection of the unique responsibilities and powers that the officers hold, they must ensure that they at all times comport themselves in a manner respectful of the rights of others. The performance of the Timor-Leste Police Service is also affected by the constraints faced by it in the crucial areas of communication, transportation, and the procurement of uniforms and equipment. The High Commissioner recommends to the international community that it consider the provision of additional assistance to the nascent police force.

71. The role of Falantil-FDTL in Timor-Leste is a unique one: in the space of a few short years resistance fighters have become the legitimate national defence force of the State. This position carries with it incredible powers and with this comes great responsibility. It is essential that the Falantil-FDTL safeguard the

freedoms that so many Timorese have died and suffered for; but their role is limited to that of providing external defence. There should be no blurring of the boundaries with the internal law enforcement of the Police Service.

72. The High Commissioner encourages the Government of Timor-Leste to accede promptly to the principal international human rights treaties; one step in the process of developing a human rights culture. Additional steps along the way must include: enacting laws that are based on international human rights standards; strengthening the judicial system to guarantee judicial independence, the rule of law and access to justice for all; building capacity throughout the judicial and administrative systems; establishing an independent monitoring mechanism, such as the Provedor; developing institutions founded on human rights principles; and establishing priorities through, for example, the elaboration of a national plan of action on human rights. Special emphasis must be placed on vulnerable and marginalized groups in society, including women, children, the elderly, the disabled and religious and ethnic minorities.

73. The High Commissioner notes that the Constitution is in many respects a positive document that reflects the new State's respect for civil, cultural, economic, political, and social rights. At the same time, however, it is evident that continued vigilance is required to ensure the full and proper protection of human rights. While the Constitution provides that customary law is to be subject to the Constitution (including human rights guarantees), more detailed attention will need to be given to the interaction of specific customary norms and human rights. Effective public education on the rights contained in the Constitution, the Universal Declaration of Human Rights and the other human rights conventions is essential in order to bring those rights to life.

74. The High Commissioner praises the work of civil society, for so long a galvanizing force for change in Timorese society. During the years of occupation and now in this transitional period, non-governmental organizations have played a valuable role in raising awareness of justice issues in the community and in pressing the justice system to deliver remedies and justice to victims. In order to ensure that civil society remains an independent, vocal and active tool of the people, a continuing force for change, the Government of Timor-Leste is encouraged to maintain an environment in which civil society can continue to play its central role in Timorese society.

75. The High Commissioner warmly applauds the Timorese people on the establishment of the Commission on Reception, Truth and Reconciliation. As the High Commissioner has stated before, it is only through justice and reconciliation that durable peace and stability can be achieved. The formal justice system will continue to hold accountable those who committed serious crimes. The Commission will enhance this process by encouraging community solutions for people involved in less serious crimes: it will help reunited local communities by giving them an opportunity for reconciliation in an environment conducive to healing. It is essential, therefore, that the Timorese people step forward and begin this important journey together. The High Commissioner notes the generous support provided by the international community to the Commission to date, and encourages the international community to ensure that the Commission continues to receive all the assistance it requires for the proper discharge of its tasks.

76. The High Commissioner commends the work of the Government of Timor-Leste and UNTAET/UNMISET to promote gender mainstreaming at many levels, including efforts to gender mainstream into the justice system, the prosecution of gender-related crimes and assistance to victims, the civil service, electoral and constitutional participation, the constitutional process and the appointment of an Adviser to the Prime Minister on Equality, the first national machinery for women to be established by a United Nations peacekeeping mission.

77. As the High Commissioner has stated before, in the struggle for Timor-Leste's independence, Timorese women not only played a pivotal role, but one that has gone largely unrecognized and unrewarded. It is therefore essential that the Government of Timor-Leste and UNMISET continue to mainstream issues raised by Timorese women, and reflect the ideas, experiences and priorities of women in the design, implementation, monitoring and evaluation of all programmes, policies and activities.

78. The High Commissioner notes that the welcome end to political violence has not seen an end to other forms of violence, in particular domestic violence and sexual abuse against women. Even today, after almost three years, little progress has been made in combating violence against women. The High Commissioner urges the Government of Timor-Leste and the legal profession to increase their efforts to process these cases, which occur daily, in accordance with the law and urges the judges, in particular, to share their knowledge of these crimes with the community.

Notes

[1] See *Official Records of the Economic and Social Council, 2002, Supplement No. 3* (E/2002/23), chap. IX, para. 255.

[2] East Timor is expected to ratify the following package of international human rights instruments on 27 September 2002: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Optional Protocol to the International Covenant on Civil and Political Rights; Second Optional Protocol to the International Covenant on Civil and Political Rights; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.